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President Biden’s Executive Order on Digital Assets

Calling for a comprehensive approach to regulation of the fast-evolving sector, President Biden yesterday issued his long-awaited Executive Order on Ensuring Responsible Development of Digital Assets. We have previously advocated for regulators and lawmakers to take proactive steps to protect investors, market integrity and financial stability, while encouraging innovation and technological advancements of market participants, and believe this Executive Order is incremental progress toward that end.

The Executive Order creates an action plan for more than 20 federal agencies and executive departments to further a national policy for digital assets across six key priorities: consumer and investor protection; financial stability; illicit finance; U.S. leadership in the global financial system and economic competitiveness; financial inclusion; and responsible innovation. Specifically, the Executive Order calls for measures to:

- **Protect consumers, investors and businesses** by directing multiple agencies to issue reports and develop recommendations to address undue risks and protections needed for access to safe financial services. These include reports and recommendations from: the Treasury on the implications of digital assets and changes in the financial market and payment system infrastructures on the U.S. economy; the DOJ on the role of law enforcement agencies in investigating and prosecuting criminal activity related to digital assets; and the Office of Science and Technology Policy on the environmental effects of blockchain technology. In connection with the foregoing, the FTC and the CFPB are encouraged to consider various competition, privacy and consumer protection concerns.

- **Promote financial stability, mitigate systemic risk and strengthen market integrity** by directing the Treasury to convene the Financial Stability Oversight Council and produce a report outlining, and providing recommendations to address, financial stability risks and regulatory gaps associated with digital assets.

- **Limit illicit finance and associated national security risks** by encouraging the Treasury, the State Department, the DOJ and other relevant federal agencies to submit to the President their views on illicit finance risks posed by digital assets. In addition, the Treasury is directed to develop a coordinated action plan to mitigate illicit finance and national security
risks and consult with other agencies in evaluating opportunities to mitigate such risks through regulation.

- *Foster international cooperation and U.S. competitiveness* by directing relevant federal agencies to establish frameworks for interagency international engagement with foreign counterparts to adopt global standards for the use of digital assets and for enhancing U.S. economic competitiveness in, and leveraging of, digital assets, and to submit a report on how to strengthen international law enforcement cooperation.

- *Explore a U.S. Central Bank Digital Currency (“CBDC”),* which may have the potential to support efficient and low-cost transactions and increase access to the financial system, by directing the Treasury to report on, among others: a CBDC’s potential impact on economic growth, stability and financial inclusion; the relationship between a CBDC and private sector-administered digital assets; and the implications that sovereign and privately produced money could have on the U.S. financial system and democracy. In addition, the DOJ is directed to provide to the President an assessment of whether legislative changes would be necessary to issue a U.S. CBDC, as well as a corresponding legislative proposal.

The nature of innovation is always challenging, but it is critical for the United States to lead in providing transparent, balanced and coordinated regulations to protect investors and national security interests, while mitigating risks to the overall stability of the U.S. financial system. While the Executive Order is a step forward, it charts a long and winding road to actual regulation. Moreover, an Administration has limited ability to direct independent regulatory agencies, and interagency efforts tend to be prolonged exercises. Still, we are hopeful that this Executive Order serves as a call to action for federal agencies to advance beyond aspirational pronouncements toward definitional frameworks.

Of course, the challenges presented to the various agencies are daunting and we continue to believe it is crucial for relevant market participants to be encouraged to provide the education, transparency and advocacy needed to help surmount these challenges.

Richard K. Kim
Rosemary Spaziani
David M. Adlerstein
I. Andrew Mun
Amanda M. Lee